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Attorneys for Plaintiffs and the Proposed Classes

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ABANTE ROOTER AND PLUMBING,
INC., GEORGE ROSS MANESIOTIS,
MARK HANKINS, and PHILIP J.
CHARVAT, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

ALARM.COM INCORPORATED, and
ALARM.COM HOLDINGS, INC.,

Defendants.

NO. 4:15-cv-06314-YGR

**DECLARATION OF BETH E.
TERRELL IN SUPPORT OF MOTION
FOR CLASS CERTIFICATION**

JURY TRIAL DEMAND

The Honorable Yvonne Gonzalez Rogers

Complaint Filed: December 30, 2015

DATE: April 25, 2017
TIME: 2:00 p.m.
LOCATION: Oakland Courthouse
Courtroom 1 - 4th Floor

DECLARATION OF BETH E. TERRELL IN SUPPORT OF MOTION FOR CLASS
CERTIFICATION - 1

CASE No. 4:15-cv-06314-YGR

1 I, Beth E. Terrell, declare as follows:

2 1. I am a member of the law firm Terrell Marshall Law Group PLLC, counsel of
3 record for Plaintiffs in this case. I am a member in good standing of the bars of the states of
4 California and Washington. I respectfully submit this declaration in support of Plaintiffs' Motion
5 for Class Certification. Except as otherwise noted, I have personal knowledge of the facts set
6 forth in this declaration. If called to testify as to the contents of this declaration, I could and
7 would competently do so.

8 2. To prepare for class certification and trial, Plaintiffs' counsel have worked
9 cooperatively to pursue Plaintiffs' and the proposed class members' claims. These efforts have
10 included drafting and filing the complaint; serving requests for production and interrogatories on
11 Defendants and conducting follow up meet and confer sessions; negotiating a stipulated
12 protective order, a non-waiver "clawback" stipulation and order, and an electronic discovery
13 protocol; negotiating search terms and custodians for Defendants' production; reviewing and
14 analyzing the hundreds of thousands of pages Defendants produced; taking depositions of
15 Defendants' key personnel; serving subpoenas on third parties, including Alliance Security,
16 Nationwide Alarm, LLC, and others, and reviewing the documents they produced; responding to
17 Alarm.com's discovery requests and producing documents; working with consultants and
18 experts; participating in mediation before the Honorable James F. Holderman (Ret.); and
19 preparing this motion.

20 3. Plaintiffs' counsel are prepared to continue to devote the resources necessary to
21 representing the interests of the proposed classes. We have committed the necessary attorneys to
22 the litigation, and will dedicate additional resources as necessary to take this case through pre-
23 trial, trial, and any appeals. We are able to fund the case, even if the case were to take several
24 years to resolve.

25 4. Plaintiffs' counsel have extensive experience in successfully representing
26 plaintiffs in TCPA class actions. Information about our firms' experience in prosecuting similar
27

1 cases can be found at www.terrellmarshall.com, www.ramolson.com, www.baileyglasser.com,
2 and www.mmccue.massattorneys.net.

3 5. The named plaintiffs have demonstrated their commitment to diligently
4 representing class members' interests. They have worked with their attorneys to provide
5 information about their experiences, have collected and produced documents and information
6 responsive to Defendants' discovery requests, and will be deposed in the coming weeks.

7 6. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the
8 deposition of Allen J. Gollinger, taken in this matter on October 28, 2016.

9 7. Attached hereto as **Exhibit 2** is a true and correct copy of a document titled
10 "Dealer Sales and Marketing Program Customer Lifecycle" that was produced by Defendant in
11 this matter under Bates Nos. ALARM-0010773-0010837.

12 8. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the
13 deposition of Anne Ferguson, taken in this matter on October 27, 2016.

14 9. Attached hereto as **Exhibit 4** is a true and correct copy of a document titled
15 "Alarm.com The Leader in Connected Services" that was produced by Defendants in this matter
16 under Bates Nos. ALARM-0016621-ALARM-0016682.

17 10. Attached hereto as **Exhibit 5** is a true and correct copy of the Alarm.com Dealer
18 Agreement executed between Alarm.com and VMS Alarms that was produced by Defendants in
19 this matter under Bates Nos. ALARM-0000005-ALARM-0000019. Defendants have designated
20 this exhibit "Confidential." Plaintiffs are therefore filing it under seal in compliance with the
21 Stipulated Protective Order (Dkt. No. 55).

22 11. Attached hereto to as **Exhibit 6** is a true and correct copy of a document titled
23 Customer Lead Service – Lead Handling Guidelines & Best Practices that was produced by
24 Defendants in this matter under Bates Nos. ALARM-0000020-ALARM-0000024. Defendants
25 have designated this exhibit "Confidential." Plaintiffs are therefore filing it under seal in
26 compliance with the Stipulated Protective Order (Dkt. No. 55).
27

1 12. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from the
2 deposition of Donald Natale, taken in this matter on October 27, 2016.

3 13. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts from the
4 deposition of Stephen Scott Trundle, taken in this matter on February 15, 2017. Defendants have
5 designated portions of this transcript as “Confidential.” Plaintiffs are therefore filing it under seal
6 in compliance with the Stipulated Protective Order (Dkt. No. 55).

7 14. Attached hereto as **Exhibit 9** is a true and correct copy of a June 23, 2010 article
8 written by Aaron T. Evans and posted on Gant Daily: A CNN Affiliate titled “Three Businesses
9 Fined for ‘Do Not Call’ Violations.” Available online at [http://gantdaily.com/2010/07/23/three-](http://gantdaily.com/2010/07/23/three-businesses-fined-for-do-not-call-violations/)
10 [businesses-fined-for-do-not-call-violations/](http://gantdaily.com/2010/07/23/three-businesses-fined-for-do-not-call-violations/) (last visited March 6, 2017).

11 15. Attached hereto as **Exhibit 10** is a true and correct copy of a January 4, 2012
12 press release from the Kentucky Office of the Attorney General titled “Attorney General
13 Conway Announces Recover from Marketing Company over Violations to Kentucky’s No Call
14 Law.” Available online at <http://migration.kentucky.gov/Newsroom/ag/vmsrecovery.htm> (last
15 visited March 6, 2017).

16 16. Attached hereto as **Exhibit 11** is a true and correct copy of a TODAY Rossen
17 Reports article by Jeff Rossen and Sandra Thomas titled “Rossen Reports: Telemarketers ignore
18 Do Not Call list.” This document was marked as Exhibit 17 during the deposition of Donald
19 Natale, taken in this matter on October 27, 2016.

20 17. Attached hereto as **Exhibit 12** is a true and correct copy of the Stipulated Final
21 Order for Permanent Injunction and Civil Penalty Judgment from *United States v. Versatile*
22 *Marketing Solutions, Inc.*, C14-10612 (D. Mass. Mar. 10, 2014), ECF No. 2-1.

23 18. Attached hereto as **Exhibit 13** is a true and correct copy of the Summary Order
24 Following Hearing from *Mey v. Monitronics International, Inc., et al.*, C11-00090 (N.D.W. Va.
25 May 11, 2012), ECF No. 127.

26 19. Attached hereto as **Exhibit 14** is a true and correct copy of email correspondence
27 dated May 1, 2012 between Nate Natale and Steve Trundle regarding The Today Show’s news

1 segment regarding VMS Alarms. This document was produced by Defendants in this matter
2 under Bates No. ALARM-0001252.

3 20. Attached hereto as **Exhibit 15** is a true and correct copy of a June 2, 2014 email
4 from Nate Natale to Jay Gotra and Brian Fabiano transmitting an article called 5 TCPA
5 Marketing Obstacles. This document was produced by Defendants in this matter under Bates
6 No. ALARM-0000696.

7 21. Attached hereto as **Exhibit 16** is a true and correct copy of email correspondence
8 dated March 17 and 18, 2015 between Jessie Young and Brian Fabiano regarding improving
9 Alliance's star rating by removing reviews. This document was produced by Defendants in this
10 matter under Bates Nos. ALARM-0000205-ALARM-0000207.

11 22. Attached hereto as **Exhibit 17** is a true and correct copy of email correspondence
12 dated July 25 and 26, 2013 between Noah Billger and Brian Fabiano regarding Alarm.com's
13 policy of not removing reviews. This document was produced by Defendants in this matter
14 under Bates No. ALARM-0001061.

15 23. Attached hereto as **Exhibit 18** is a true and correct copy of email correspondence
16 dated February 16 and 17, 2015 between Noah Billger, Steve Trundle, and Nate Natale agreeing
17 to remove Alliance's reviews. This document was produced by Defendants in this matter under
18 Bates Nos. ALARM-0005628-ALARM-0005629.

19 24. Attached hereto as **Exhibit 19** is a true and correct copy of the 1st Amendment to
20 the Alarm.com Dealer Agreement Between Alarm.com Incorporated and Alliance Security,
21 dated March 12, 2015. This document was produced by Defendants in this matter under Bates
22 Nos. ALARM-0005483-ALARM-0005486. Defendants have designated this exhibit
23 "Confidential." Plaintiffs are therefore filing it under seal in compliance with the Stipulated
24 Protective Order (Dkt. No. 55).

25 25. Attached hereto as **Exhibit 20** is a true and correct copy of email correspondence
26 dated August 21-23, 2015 between Nate Natale and Martin Herbert regarding company growth
27

1 attributable to Alliance Security. This document was produced by Defendants in this matter
2 under Bates Nos. ALARM-0005347-ALARM-0005349.

3 26. Attached hereto as **Exhibit 21** is a true and correct copy of Defendants' First
4 Continuing Interrogatories to Plaintiff Philip J. Charvat and Objections and Answers Thereto,
5 dated July 11, 2016.

6 27. Attached hereto as **Exhibit 22** is a true and correct copy of an Alliance Security,
7 Inc. "Schedule of Protection" contract and Alarm.com "Alarm Monitoring Agreement" that
8 Plaintiff Charvat received at his home from Joe Wyche of Alliance Security on September 9,
9 2015.

10 28. Attached hereto as **Exhibit 23** is a true and correct copy of Alliance Security
11 Inc.'s Response to Plaintiff's Subpoena to Produce Documents, Information or Objects or to
12 Permit Inspection of Premises in a Civil Action, dated May 26, 2016.

13 29. Attached hereto as **Exhibit 24** is a true and correct copy of Alliance Security
14 Inc.'s First Supplemental Response to Plaintiffs' Subpoena to Produce Documents, Information,
15 or Objects or to Permit Inspection of Premises in a Civil Action, dated June 17, 2016.

16 30. Attached hereto as **Exhibit 25** is a true and correct copy of the Expert Report of
17 Anya Verkhovskaya, A.B. Data, Ltd., dated November 7, 2016, excluding exhibits.

18 31. Attached hereto as **Exhibit 26** is a true and correct copy of the Rebuttal Expert
19 Report of Anya Verkhovskaya, dated January 27, 2017, excluding exhibits.

20 32. Attached hereto as **Exhibit 27** is a true and correct copy of Defendants' First
21 Continuing Interrogatories to Plaintiff Abante Rooter & Plumbing, Inc. and Objections and
22 Answers Thereto, dated July 11, 2016.

23 33. Attached hereto as **Exhibit 28** is a true and correct copy of Plaintiff Mark
24 Hankins Answers to Defendants' First Set of Interrogatories, dated July 11, 2016.

25 34. Attached hereto as **Exhibit 29** is a true and correct copy of the Complaint for
26 Civil Penalties, Permanent Injunction, and Other Relief from *Federal Trade Commission v.*
27 *Justin Ramsey, et al.*, C17-80032 (S.D. Fla. Jan 10, 2017), ECF No. 1.

DECLARATION OF BETH E. TERRELL IN SUPPORT OF MOTION FOR CLASS
CERTIFICATION - 6

CASE NO. 4:15-CV-06314-YGR

36. Attached hereto as **Exhibit 31** is a copy of the Order Certifying a Class from *Biringer v. First Family Ins., Inc.*, No. 4:14-cv-00566 (N.D. Fla. Aug. 4, 2016) ECF No. 79.

37. Plaintiffs have analyzed the call data produced by Alliance's agent, Nationwide Alarms, Inc. to determine the number of prerecorded messages sent to unique non-cellular numbers. During the merits phase of this case, Plaintiffs will retain an expert to identify and exclude any of these numbers that were assigned to businesses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED in Seattle, Washington, this 7th day of March, 2017.

/s/ Beth E. Terrell, SBN #178181
Beth E. Terrell, SBN #178181

CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on March 7, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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1 DATED this 7th day of March, 2017.

2 TERRELL MARSHALL LAW GROUP PLLC

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